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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,811	11/02/2001	Aaron L. Strand	47097-01100	3820
28763	7590	09/02/2005	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			CHOI, STEPHEN	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding:



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

09012005

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

The period for reply for the office action mailed on 09 May 2005 is hereby restarted from the mailing date of this communication. Attached is a copy of the office action mailed on 09 May 2005.

  
STEPHEN CHOI  
PRIMARY EXAMINER

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/002,811	STRAND, AARON L.
	Examiner Stephen Choi	Art Unit 3724

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 28 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 10-32 is/are pending in the application.  
 4a) Of the above claim(s) 26,31 and 32 is/are withdrawn from consideration.  
 5) Claim(s) 10-24 is/are allowed.  
 6) Claim(s) 25 and 27-30 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 May 2002 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25, 28, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Fitz, jr. (US 5,417,134).

Fitz discloses all the recited elements of the invention including:

- a housing (2) forming an opening, a first slot, and a second slot (at 42);
- a punch (3);
- a guide mechanism for sliding into the opening and disposed generally perpendicular to a direction of movement of the punch (16, 16a) is adapted to be slideably converge from the position shown on Figure 6 to the position shown on Figure 5 that is further into the open region).

Regarding claim 30, the guide having a stepped edge (16, 16a, Figure 4).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitz, Jr. (US 5,417,134) in view of Applicant's Admitted Prior Art (hereafter AAPA).

Regarding claim 27, Fitz discloses the invention substantially as claimed except for the guide slot having a width approximately 15 to 30 % less than the width of the punch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the width of guide slot to be approximately 15 to 30 % less than the width of the punch in view of AAPA since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Regarding claim 29, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the size of slots to accommodate tracks in view of AAPA, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. It is noted that statement regarding the common knowledge set forth above with respect to claims 27 and 29 is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of the previous office actions.

***Allowable Subject Matter***

5. Claims 10-24 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 28 February 2005 have been fully considered but they are not persuasive.

Applicant contends that Fitz does not a guide mechanism engaging ends of the guide notch and disposed to engage and guide a trailing edge of a guide notch.

Fitz discloses all the recited structural elements of the invention as claimed in claims 25 and 28. Therefore, the device of Fitz is capable of cutting a guide notch into a zipper of polymeric bag. Furthermore, the guide mechanism of Fitz is also capable of engaging ends of the guide notch and disposed to engage and guide a trailing edge of a guide notch. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

#### **Conclusion**

7. Applicant's request for an interview is noted. Applicant is invited to call the examiner to further discuss the present application if necessary.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Friday 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sc  
04 May 2005

  
STEPHEN CHOI  
PRIMARY EXAMINER